



1 Pursuant to Fed. R. Civ. P. 38, a party has "[t]he right of trial by jury as declared by  
2 the Seventh Amendment to the Constitution—or as provided by federal statute[.]" Here,  
3 neither the FTC Act nor the Telemarketing Act provides for a jury trial. The Seventh  
4 Amendment "preserves the right to trial by jury of all legal claims," but "'no right to a jury  
5 exists' for equitable claims." Danjaq LLC v. Sony Corp., 263 F.3d 942, 962 (9th Cir. 2001)  
6 (citations omitted). Defendants concede that they are not entitled to a jury trial on the FTC's  
7 equitable claims. Defendants' Response at 3.

8 Defendants argue, however, that they are entitled to a jury trial because the FTC seeks  
9 a legal remedy. Defendants rely on Great-West Life & Annuity Ins. Co. v. Knudson, 534  
10 U.S. 204, 122 S. Ct. 708 (2002) to argue that the FTC's claims are for legal restitution  
11 because they seek to recover funds that have been commingled with defendants' general  
12 assets. In Great-West, the Court held that plaintiffs sought legal relief where they imposed  
13 personal liability on defendants for a contractual obligation to pay money. Id. at 221, 122  
14 S. Ct. at 719. In contrast, the Court found that restitution lies in equity where plaintiff seeks  
15 to "restore to the plaintiff particular funds or property in the defendant's possession." Id. at  
16 214, 122 S. Ct. at 715. Here, the FTC does not seek to impose personal liability for a  
17 contractual obligation. Instead, the FTC seeks relief based on the court's equitable powers  
18 to "redress injury to consumers resulting from Defendants' violations of the FTC Act and the  
19 [Telemarketing Act]." Therefore, the FTC's claims lie in equitable, not legal, restitution.

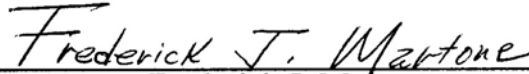
20 Defendants next contend that the FTC's request for "refund of monies paid" is a form  
21 of legal restitution. However, "[t]he award of monetary relief is not necessarily always  
22 legal." Smith v. Barton, 914 F.2d 1330, 1337 (9th Cir. 1990) (citations omitted). For  
23 example, damages are equitable where, as here, they are in "action[s] for disgorgement of  
24 improper profits." Id. (quotation omitted). Accordingly, the FTC seeks equitable relief, and  
25 thus defendants are not entitled to a jury trial. This is not an action for damages.

26 Moreover, weighing carefully the interests of justice and the interests of judicial  
27 economy, we decline to impanel an advisory jury under Rule 39(c), Fed. R. Civ. P., to hear  
28

1 any claims in this action. An advisory jury would add needless complexity with no attendant  
2 benefit.

3 **IT IS ORDERED GRANTING** plaintiff's motion to strike defendants' jury  
4 demand (doc. 44).

5 DATED this 6<sup>th</sup> day of February, 2013.

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8 Frederick J. Martone  
9 United States District Judge  
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